Department of Revenue

OFFICE Of the Board

STATION Madras

Mis No. 688

Dated 27/2/37

Pages in the file

(SUBJECT.)

Price - (Addl) — Addl Dy Sec

Secy 757/36 — Memorial — Govt

Govt — Reply — Secretariat

From

A.G. Blaie Esq., I.C.S.,

Collector of Bellary.

To

The Secretary to the Board of

REVENUE, M A D R A S.

Sir,

Suit - O.S.759/36 - District Munsiffs Court - Bellary - Plaintiff - Kuruba Yellappa and Sidda Vanenur village - Bellary Taluk - defence - sanction - requested.

The Plaintiffs have filed a suit against Government as defendant No.1 in O.S.No.759/36 on the file of the District Munsiff's court Bellary. The defendant No.2. Kuruba Siddabasappa had applied to the Tahsildar Bellary an house site 10 yards by 8 yards in the village site under B.P.C.No.21 for house building purpose. The Tahsil rejected the application on the ground that there were Kambli looms on the ground put up by the Plaintiffs. The applicant appealed to the R.D.O., Bellary, who after his personal inspection on 9-4-36, found the objections of the plaintiffs to be frivolous and ordered the assignment of site measuring 7½ yards by 4 Yards to the appellant as he found that there was an open site of about 140 feet by 40 in the locality. Please see xxxxxxxx Revenue Divisional Officer's D.Dis.217/36. The Revenue Divisional Officer considered that there was plenty of vacant site in the Locality to which the looms could be shifted.

Before the Tahsildar could formally assign the site and issue a T.P. according to the orders of the Revenue Divisional Officer the plaintiff constructed walls on the site enclosing a portion of the site assigned to the 2nd defendant, with an idea that possession of the site would give them a better title. The action of the plaintiffs

H 1-5 (Q)
H 27 (Q).

H 33-34 (R)

H 1-2 (V).
H 3 (V).
-2 (N).
2 (N).

cf.

H 7-9 cf

do

They also appealed to the Collector against the order of the Revenue Divisional Officer and it was dismissed in this office D.Dis.3497 dated 16-9-1936. The Revenue Divisional Officer has instructed the Tahsildar to evict the plaintiffs under section 6 of the Land Encroachment Act of 1905 before issuing the T.Ds formally to the defendant No.2. Anticipating the eviction notices under section 6 of the Land Encroachment Act, the plaintiff sent a suit notice to the Collectors under section 80 C.P.C. They were informed that the threatened suit would be awaited. Later on, the Plaintiffs approached me again to stop further proceedings in the matter, pending decisions of the Court. But their request was also refused. The main contention of the plaintiffs is that they have got adverse possession of over 60 years against Government. Mere temporary occupation of village sites cannot give them any occupancy right. The plaintiffs do not seem to possess any documentary evidence in support by their claim.

I enclose a copy of the written statement furnished by the Government Pleader and the records noted in the margin, and I request you to sanction the defence of the suit and return the draft written statement duly approved. The suit stands posted to 2-4-1937.

Mlty. 10/2-37

RVJ/10.2.A.N. 10/2/37 FOR COLLECTOR.

Enclosures.

~~1. Copy of Plaint.~~
Tahsildar's Ref.138/3
R.D.O's D.Dis.217/36.
-do- D.Dis.3021/36.
Collector's D.Dis.3407/36.
-do- D.Dis.4967/36.
-do- D.Dis.5550/36.

In the Court of the District Munsif of Bellary. 3
O.S.No. 759 of 1936.

Between. Kuruba Yallappa and another- Plaintiffs.
and 1. Secretary of State for India in council by Collector of Bellary.
2. Kuruba Sidda Basappa. } Defendants.

Plaint filed on behalf of the Plaintiffs under order 7, Rule 1 C.P.C.

I. Plaintiffs :--
(1) Kuruba Yallappa, aged about 65 years, son of Siddappa:
(2) Kuruba Siddappa, aged 48 years, son of Sanjeevappa
both are Kurubas, cultivators and weavers residing at Vanenur in Bellary Taluk
Address for service of plaintiffs is :--
C/O Kolar Rao B.A.B.E.,
Vakil Bellary.

II. Defendants:--
(1) Secretary of State for India in Council represented by the District Collector of Bellary.
(2) Kuruba Sidda Basappa, aged about 26 years son of Lingappa Kuruba, cultivator, residing at Vanenur in Bellary Taluk.

III The plaintiffs are residents of Vanenur village as also their forefathers for a number of decades. The plaintiffs and their forefathers have been in exclusive possession and enjoyment of the piece of land described in the schedule hereunto. They are and have been and their fore-fathers were, in enjoyment and possession of the same as owners, absolutely exclusively, openly continuously and adversely to all others for more than 70 years. They have thus acquired title to the suit property even against the 1st defendant since plaintiffs and their ancestors have been in possession of the same as well over the statutory period.

IV. Recently about 7 or 8 months ago the 2nd defendant, who is a "Dayadi" of these plaintiffs with a view to create trouble and to annoy and harass these plaintiffs applied to the Tahsildar of Bellary for assignment of the suit land to him. The Tahsildar of Bellary after due enquiry found that the plaintiffs were in occupation of the ~~2nd defendant~~ said land in their own right, refused the prayer of the 2nd defendant.

V. The 2nd defendant appealed to the Revenue Divisional Officer who assigned to the 2nd defendant a portion of the suit land and the Collector confirmed the said order though it was submitted that the plaintiffs had acquired title to the land.

VI. The 1st defendant has since issued a notice upon the Plaintiffs asking them to show cause why they should not be evicted and plaintiffs learn and believe the same to be true that active and coercive steps are being taken to eject the plaintiffs from the

from the land and also pull down the house that they have built thereo The 2nd defendant is trying his best to have the plaintiffs ejected f rom the land and take possession of the land and pull down the house of the plaintiffs. Hence this suit for declaration and establish ment of their title to the suit land and for an injunction restraining the defendants from interfering with the lawful possession of the plaintiffs of the suit land.

VII. As already stated above the plaintiffs have acquired title to the suit land by long, continued, open, hostile and adverse possession for more than the statutory period. Therefore, neither of the defendants have any manner of right or title to interfere with the possession of the palintiffs and to evict them.

VIII. The 1st defendant has been served with the required statutory notice as required by section 80 of the Civil Procedure Code a copy whereof is herewith produced as also the postal acknowledgment.

IX. Cause of action for this suit arose in June 1936 when the Revenue Divisional Officer granted the land to the 2nd defendant and in September 1936 when the Collector confirmed it and subsequently.

X. Value of the suit for purposes of court fees and jurisdiction is Rs. 10/- and court fee is paid as hereunder.

(Market value of the suit land is Rs. 10/- and a court fee of — is paid thereon under section 7 Cl iv(c) and the proviso thereunder)

XI. The plaintiffs, therefore, pray that the Hon'ble Court may be pleased to

(a) declare and establish the title of the Plaintiffs to the suit property

(b) restrain by an injunction the defendants from interfering with the possession of the plaintiffs or evicting them from the suit land;

(c) grant costs of this suit.

(d) and grant such other relief as the court deems fit in the circumstances of the case;

S c h e d u l e

Unassessed land S.No. 52 of the village of Vanenur in Bellary Taluk The following piece and parcel of the said number with the following boundaries.
East: Rastha, West the same survey number North. Same S.No. South Siddabasappa's house and Kuraba house.
East to West:- 15 yards. Value of the land is Rs. 10/-
North to South. 17 "

V e r i f i c a t i o n .

We Huruba Yallappa and Huruba Siddappa, plaintiffs herein do hereby declare that what is stated above is true to the best of our knowledge and information which we believe to be true.

/ True Copy/

10-2-37.

I.S. 10.2.37.

F o r Collector.

In the court of the District Munsif of Bellary.

O.S.No. 759/36

Between:-

1. Kumba Yellappa
2. Kumba Sidappa ..... Plaintiffs.

and

1. The Secretary of State for India in Council by the Collector of Bellary.
2. Kumba Siddabasappa ..... Defendants.

Written statement on behalf of the 1st, Defendant under Order 8, Rule 1 Civil Procedure Code:-

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The 1st.Defendant begs to submit as follows:-

1. That this defendant denies the truth of all the allegations in the plaint except such as are herein expressly admitted by him to be true.

2. That the Allegations in para 3 of the plaint, that the plaintiffs and their forefathers have been in exclusive possession and enjoyment of the suit-land for more than 70 years and that they have thus acquired title to the suit property as against this defendant, are untrue. That the plaintiff is put to strict proof of these allegations.

3. That the site in question forms the southern portion of a big plot of vacant site, measuring 140ft by 40ft belonging to this defendant(Village site poramboke). That the plaintiffs have not stated in the plaint the nature of their possession. That the only thing they did in this site is that they planted a few sticks and stones to serve as Kambli looms which are removeable at pleasure. There were only two looms of this kind when the Deputy Collector inspected the site on 9-4-36. There were five of them in the site in question when the Tansildar inspected the site on 15-9-35. That it is clear therefore that 3 of these had been removed by the time the Sub Divisional Officer inspected the site.

(b) That the mere planting of a few sticks and stones in the ground which are removeable at pleasure does not constitute the adverse possession necessary to confer title upon the plaintiffs as against the rightful owner viz., the Government (this defendant) That, as a matter of fact, sticks and stones were being planted in the site in question by the plaintiffs temporarily whenever necessary and were being removed when they were not necessary. Such planting of sticks and stones for temporary purposes does not constitute any adverse possession as against this defendant.

4. That the ordinary use of a village site by neighbouring owners for communal purposes does not constitute any adverse possession as against Government. That the site in question along with the adjacent open site was being used in a general manner by all the neighbouring owners of houses, for putting up looms and for other purposes.

5. That the 1st.Plaintiff himself put in an application to the Tahsildar before 9-12-35 in which he admitted that the site in question is gramanatham poramboke belonging to this defendant and requested the Tahsildar to grant the site applied for by the 2nd Defendant to him for constructing a house taking into consideration the fact that he was putting up looms in it for a long time, and the fact that he had only one small house in the village which was not sufficient for him. That in this application he merely alleged that he was putting up looms from his grandfathers time, no period being mentioned. That the plaintiffs are estopped from denying the title of this defendants now.

6. That the first plaintiff also filed an application to the Deputy Collector Bellary on 12-4-36 in which he distinctly alleged that he was in possession of the site in question by putting up looms for 30 to 40 years only. That mere user of the site for temporary looms for 30 to 40 years is not sufficient to enable him to set up title by adverse possession as against this defendant.

7. That the nature of possession alleged by the plaintiffs is to be deemed to be merely permissive possession but not a possession amounting to a denial of the title or ouster of this defendant.

8. That the plaintiffs did not mention in their applications the extent

of the site which was in their possession as alleged by them. That they merely stated therein that the site applied for by the 2nd Defendant viz., 10x8 yds should not be granted to him as they were putting up looms therein and that it should be granted to them. That the Deputy Collector granted on 11-6-36 to the 2nd Defendant the site to the north of his house measuring 7yds 6 inches east to west and 4 yds north to south. That the plaintiffs came to know of it and thereafter occupied a portion of that site measuring 4x3½yds or (14 Sq.yds) and also a large extent of the open site west wards and northwards measuring in all 16x17½yds by constructing houses, walls and foundations in a high handed manner. That when the plaintiffs were about to be ejected they gave a notice to this defendant under section 80 C.P.Code.

9. That the suit is not therefore maintainable from any point of view.

10. This defendant therefore prays that the plaintiffs suit may be dismissed with costs.

Date of hearing 2-4.

C.F. 16

DRAFT FOR APPROVAL.

	Dat	Initials.
When received for fair copying		
When copied		
When examined		
When signed		
When despatched.		

SUBJECT :— Suits - (Bellary) - Bellary St Municipality - Case 759/36 - Vaneenur village - Assignment - Defence - Sanctio

8(LR)

READ AGAIN , dated 19 .

" " " " 19 .

READ *ALSO* :—

No. From the , No. A 597/37 HA 1-2 of — dated (19)

" " " " " 19

" " " " " 19

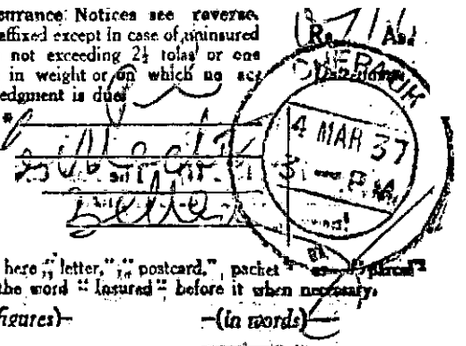
~~Order~~ / Resolution ~~Rent~~ Ms. No. 688, dated 29 . 2 . 19 37 .

The Board sanctions the defence of the suit.

2. The draft written statement as revised by the Board should be filed in the Court

No. 162

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.



Received a ...tered * _____ **addressed to** _____

_____ * Write here "letter," "postcard," packet "sealed parcel" with the word "Insured" before it when necessary.
Initials of Receiving Officer

Insured for Rs. (in figures) _____ *(in words)* _____

Weight | *Rate* / *Tola*

Insurance fee Rs. ——— *As.* 1 ——— *(in words).*

If insured.

Name and address of sender.